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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

Case No. _____

In The

Supreme Court of the United States

October Term, 1995

ROBERT WILSON,

Petitioner,

v.

STATE FARM FIRE AND CASUALTY CO.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT WILSON
15630 S. Loomis Street
Harvey, IL 60426
(708) 339-0092
Pro Se

---

42 pp

QUESTIONS PRESENTED

1. Whether the District Judge had jurisdiction to dismiss the Appellant's Constitutional Complaint on June 25, 1992, when there is no claim filed and there is no defendant without a claim filed?

2. Whether the June 25, 1992 Dismissal deprived the Appellant of his right to due process and equal protection of the law?

3. Whether the District Judge, as well as the Seventh Circuit Court Judge, deprived the Appellant of equal protection of the law when they denied the appointment of counsel at the Appellant's expense?

4. Whether there can be equal protection under the law when the Appellant is without counsel?

5. Whether Judge Hart erred in accusing the Appellant three times in his Orders of filing a claim with State Farm?

6. Whether Judge Hart erred in his Order alleging that the Appellant waited some four years to file his action?

7. Whether the District Judge acted proper when he stated upon the June 25, 1992 Dismissal:

"I also want to tell you, Mr. Wilson, that if the Court of Appeal thinks your Appeal is frivolous, they may impose sanctions. now, you had better take a careful look at my Order and abide accordingly." Transcript P.1

8. Whether the District Judge deceived the Seventh Circuit Judges when he stated in his Order:

"That the Appellant filed his actions four years after the toss occurred on a claim limitation of one year."

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I.

OPINION BELOW

The opinion of the Seventh Circuit Court of Appeals, is unpublished, is attached hereto as Appendix 1-E. An opinion was issued by the District Court for the Northern District of Illinois which is attached as Appendix 1-B.

II.

JURISDICTION

The opinion of the Seventh Circuit Court of Appeals was filed September 13, 1995, petition for re-hearing was filed on December 13, 1995. This Court's Jurisdiction is invoiced under Title 28, U.S.C. Section 1331, and Title 28 U.S.C. Section 1254 (1) Amendment 14 to the U.S. Constitution, and the petition is timely.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. CONSTITUTIONAL PROVISION - Fourteenth Amendment United States Constitution

B. STATUTORY PROVISION - 1331

IV.

STATEMENT OF THE CASE

The origin of this case and subsequent appeals stems from the Chancery Judge Siegam's Order of Denial of rights to file claims with his insurer, State Farm Fire & Casualty Co. In violation of the Insurance Policy; the Illinois Insurance Code Section 143-1, and the Illinois Rev Stat, 1985 Ch 73, pa 755-1, secondly, the Circuit Court executing jurisdiction without a claim filed which is not his to execute without a claim or defendant, in which his power must rest. This is the subject matter of this petition for certiorari.

V.

STATEMENT OF FACTS

To the Honorable Tribunal, Robert Wilson, *Pro Se* Petitioner, would like to point out that attached hereto are two motions. One presented to the District Court and the other one presented to the Seventh Circuit Motion Judge, for the appointment of counsel at the petitioner's expense which was also the matter ruled upon by the Seventh Circuit Court of Appeals. Both are ready for an understanding. What is not ready for an understanding is the origin of the cause. The petitioner will give a brief summary of it to you, and before reaching the first judicial level, you won't need to read the attached motions. The Courts never had jurisdiction at any point to rule as they did. Moreover, there is no law in support thereof.

On June 27, 1983, a tenant of the building -- a Vietnam Veteran, committed unbelievable damage to the petitioner's property. In court, he pled guilty and was fined and sentenced to six months. Too much time elapsed and no assignment to an insurance adjustor, so the petitioner began complaining. We have homeless tenants here. The petitioner would question the Claims's superintendent's dilatory delay. He was a man of power and rejected the petitioner questioning him. He reached a level of refusal to talk with your petitioner, so petitioner called his boss and complained to Mr. Valentine. Mr. Corrigan, claim's superintendent, exerted his power and required the petitioner to submit to an examination under oath regarding the guilty plea of the

perpetrator conducted by Attorney Albert DeVito.

Shortly thereafter, a second building suffered a tremendous loss due to a fire in the house next door. The Harvey fire report clearly states that the petitioner property was too close. Nevertheless, your petitioner was again required to submit to examination under oath, conducted by lead counsel, Attorney Frederick J. Sudekum, III. Meanwhile, the superintendent cancelled the first policy without notice; used the same premium to write a second policy on the same property. On March 5, 1986, by letter, denied both claims without ever allowing your petitioner to file claims with his insurer, State Farm Fire & Casualty Co. Thereafter claiming the first policy of insurance was not in effect at the time of loss.

Attorney Edward Ward presented the case, second appearance in court and he was allowed to withdraw without cause. He was, however, a man of integrity and returned the petitioner's $1,300. The petitioner then filed a motion for an order allowing the petitioner to file a sworn statement in proof of loss form, with his insurer, State Farm Fire and Casualty Co. The court refused to rule until petitioner would bring in some kind of an Attorney to court. Attorney Gary Ravitz appeared on behalf of the petitioner and the case was dismissed, and motion to file a claim was denied. To wit, no proof of loss has been filed as required by the insurance policy. Also, it should be mentioned that the two attorneys presented to the court a homemade fire report alleging the fire started in the petitioner's building. After Attorney Gary Ravitz's representation, no other

attorney has been willing to represent your petitioner. Henceforth, the courts have attempted to rescue the denial. These men took the law into their own hands and now the courts cannot rescue them without creating a supreme conflict with the petitioner's Fourteenth Amendment basic rights.

VI.

REASON FOR GRANTING CERTIORARI

To resolve the Federal Jurisdictional Question. This matter before the Court should be granted under rule 10, (A) and (C), an historical ruling entered by a state Federal Court of last resort. Its historical finding suggests that jurisdiction is no longer a prerequisite requirement; that Federal Courts no longer need a claim, defendant or jurisdiction to enter Federal Courts; that the fourteenth amendment guarantee cannot be relied upon: To resolve the orders contesting State Farm's investigation which reveals the petitioner was deprived of his basic right to file claims with State Farm: There is no party to receive the benefit of the courts' orders.

The petitioner has a right like that of the courts to file claims on his valid insurance policies. This refusal has so far departed from the accepted and usual course of judicial proceedings, until it calls for the exercise of this court's supervisory power. Wherefore, without delay, the petitioner's prayer should be granted. Petitioner prays for the reversal of the June 25, 1992 dismissal, that it be referred back to the Chancery Court, and that it be ordered that petitioner be allowed to file claims with his insurer, State Farm Fire & Casualty Co.

UNITED STATES COURT OF APPEALS
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94-2646

ROBERT WILSON,	) On appeal from the
	) United States District Court,
Plaintiff-Appellant,	) For the Northern District
	) of Illinois,
	) Eastern Division
v.	)
	) No. 92 C 1770
STATE FARM FIRE AND	) Hon. William T. Hart,
CASUALTY COMPANY,	) Judge Presiding
	) Seventh Circuit Court
Defendant-Appellee	) of Appeals

MOTION TO APPOINT COUNSEL TO REPRESENT THE APPELLANT'S MOTION ON APPEAL AT THE APPELLANT'S EXPENSE

The Appellant, ROBERT WILSON, Pro Se Appellant in the above caption cause and respectfully request of the Honorable Court to appoint counsel at the Appellant's expense to represent the Appellant's Motion on Appeal for the following reasons:

The Appellant will give a brief statement of the case, be brief, and offer no argument. The Appellant will only point to the issues in support of reasons why this Court should grant this Motion.

FACTS

On March 12, 1992, the Appellant presented a Complaint to the District Judge, William T. Hart, complaining of being denied the right to file claims with his insurer, State Farm Fire and Casualty Company. On June 25, 1992, the District Judge Hart dismissed on a Motion by the Appellee, and the Appellant filed a timely notice of appeal. On September 8, 1992, this Court summarily affirmed the District Court's Order. On November 17, 1993, the Appellant presented the same Complaint to the Home Office of State Farm in Bloomington, Illinois. The Appellant complained to the President and Vice President of being cheated out of two valid claims. State Farm investigated the Appellant's Protest Complaint and four days later, the Appellant again met with State Farm to learn that their investigation reveals that the Appellant was indeed denied the right to file a claim as required by the Illinois Insurance Code 143.1 and the Ill. Rev. Stat. 1985 Ch 73 Par 755-1 of the Illinois Code of Civil Procedures and terminated the claim's superintendent. As a consquence, for misrepresentation of this case before the Courts, the Law Firm of Querry and Harrow terminated the two attorneys.

The President contends that although the Appellant had a valid complaint, the Courts say that we don't have to repair the property; however, if the Courts say that we must repair the property, we will honor that ruling. The Appellant felt this is cheating him. The Appellee said, "We are not cheating you, it's not our ruling, we know that we don't handle valid claims in this manner." The Appellant

asked to raise one final question: "How can the Courts dismiss a claim if none has been filed?" The President's reply was that the question was misdirected. After six months of seeking counsel to no avail, the Appellant filed three Motions with the District Judge on June 6, 1994. Motion to present a jurisdictional question: Whether this Court had jurisdiction to dismiss Case No. 92 C-1770 on a Motion where there is no claim filed, and there is no Defendant without a claim? Whether the June 25, 1992 dismissal deprived the Appellant of due process and equal protection under the Law? Motion to Appoint Counsel to represent the Appellant's Motion at the Appellant's expense, and Motion to delay the ruling on the Motion regarding the jurisdictional question if the Motion for Counsel is denied, to allow the Seventh Circuit to rule on the same question.

On June 27, 1994, the Motions were denied and the Court held: Plaintiff is precluded by the Seventh Circuit ruling from raising such a question, and that Plaintiff's jurisdictional question is untimely. Plaintiff appealed.

REASONS FOR GRANTING THIS MOTION

When attorneys examine these documents before this Court, they witness the same thing State Farm saw which caused them to take strong actions: A clear misrepresentation by the attorneys of record, and a clear misrepresentation by Judge Hart.

The Order turned the Appellant's Complaint completely around and stated three times that Plaintiff filed a claim with State Farm. Attached hereto is a page of an examination by the Appellee under

oath and set forth as follows:

Q. Do you have a letter making the claim?

A. No, I didn't make a claim, I called the insurance adjuster and they sent Walter Churan out.

Also, attached is a Notice of Motion filed in the Chancery Court before Judge Harold Siegan, which sets forth as follows: Then and there request that an order be issued directing the Defendant to furnish the Plaintiff with a sworn statement in proof of loss form as required by the insurance policy. The Motion was denied. For your convenience, is a brief statement from an Appellate Court Opinion of Illinois: David v. Allstate Insurance Company, 147, Ill. App. 3d 581, 498 N.E.2d (1986).

SECTION 143.1 OF THE CODE SPECIFICALLY STATES THAT A CONTRACTUAL LIMITATION PERIOD IS TOLLED FROM THE DATE PROOF OF LOSS IS FILED, IN WHATEVER FORM IS REQUIRED BY THE POLICY. (ILL. REV. STAT. 1985, CH. 73, PAR. 7555.1.) In CONSTRUING THIS CLAUSE, WE BELIEVE THAT THE LEGISLATIVE INTENT IS BEST INDICATED BY THE STATE'S SPECIFIC WORDS. Further, take notice to the District Judge Order: That Plaintiff waited almost four years to file his actions. Also, attached is a letter from the claims superintendent which is set forth as follows: DATE OF LOSS: June 27, 1983, DATE OF DENIAL: March 5, 1986, PLAINTIFF FILED HIS ACTION: March 3, 1987. In spite of this undisputable fact, Judge Hart continues to state in his Orders that Plaintiff waited some four years to file his actions. A reading of the record, both State and

Federal, you will discover that no other person has ever accused the Appellant, except Judge Hart, of these two statements in his Order. When the Appellant attempted to disprove the filing of a claim, and motioned the Seventh Circuit Court to order a copy of the claim, the Defendant attached a copy of the Court's Order to his Response Motion and the Seventh Circuit read that Plaintiff waited almost four years to commence actions on a one year limitation claim, it controlled the outcome and the Seventh Circuit based its decision on misleading statements, and summarily affirmed the District courts Order and UPHELD a grave injustice. The documents attached hereto leaves no room for arguments, this Honorable Court was clearly and convincingly deprived of its right not to be misled by anyone. This Court is also fully aware that there should not be any quarrel regarding whether a claim exists. It is required to be attached. Some attorneys believe that there is a conspiracy between the Courts and State Farm, while others say that whatever it is that they are not going to get involved in it on the basis that they practice law before Judge Hart. The Appellant's rights are of no value if he cannot defend them. The denials mentioned in the Court's Orders are based upon procedures.

If the District Court Judge is operating to defeat the Appellant's meritorious cause of actions, the need for counsel is crucial to protect the Appellant's equal protection rights. Further, if this Court's HONOR does not extend to coverage of the Appellant, then define please, where does the Appellant go for justice when justice is denied?

A Judge is supposed to be impartial, fair and in total respect of the reviewing Court's right to have the truth before them, in order that their independent ruling not be led to an erroneous conclusion. In a real sense, Judge Hart ruled for all three Judges. In tampering with the reviewing Court decision will cause the Appellant to undergo a three or four years delay to obtain a decision which could have been decided by now. There is really nothing to review. We have nothing here, no claims and no Defendant without a claim filed. This is not a matter of whether a claim exists, but a matter of whether this Court has the courage to give it to me. When the Appellee gives the Appellant more respect than the courts, the Judicial System is clearly in need of fixing.

WHEREFORE, the Appellant prays that this Honorable Court carefully examines the attached documents and end the Appellant's injustice or appoint counsel to defend a HELPLESS Appellant.

Respectfully submitted,

ROBERT WILSON

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94-2646

ROBERT WILSON,	) On appeal from the
	) United States District Court,
Plaintiff-Appellant,	) For the Northern District
	) of Illinois,
	) Eastern Division
v.	)
	) No. 92 C 1770
STATE FARM FIRE AND	) Hon. William T. Hart,
CASUALTY COMPANY,	) Judge Presiding
	) Seventh Circuit Court
Petitioner-Appellee	) of Appeals

MOTION TO PRESENT A JURISDICTIONAL QUESTION: WHETHER THE COURT HAD JURISDICTION TO DISMISS CASE NO. 92 C 1770 ON JUNE 25, 1992

NOW COMES THE PLAINTIFF, ROBERT WILSON, proceeding *Pro Se*, by and through its Motion, respectfully requests to be allowed to present a jurisdictional question.

FACTS

1. On March 12, 1992, the Plaintiff's Complaint alleged before this Court a denial of rights pursuant to the 14th Amendment which guarantees the Plaintiff due process and equal protection of the law.

2. On June 25, 1992, the Court dismissed Plaintiff's actions and held that Plaintiff had not set forth a valid constitutional claim for denial of due process or equal protection. The Order also stated TWICE that Plaintiff filed a claim with State Farm Insurance Company.

3. On November 17, 1993, Plaintiff presented the same issue to the Home Office of State Farm in Bloomington, Illinois. Plaintiff complained to the President and Vice President of being cheated out of two valid claims. State Farm investigated the Complaint. Four days later, State Farm's investigation revealed that Plaintiff was denied the right to file a claim as required by the Illinois Insurance Code Section 143-1, and the Ill. Rev. Statute. 1985, Ch. 73, Par. 755-1, of The Code of Civil Procedures.

4. As a consequence, for misrepresenting this case before this Honorable Court, State Farm took strong actions in opposition, and this Court should consider the same.

Claim Superintendent Mr. Richard T. Corrigan, Terminated

Attorney Albert DeVito, Terminated

Attorney Frederick J. Sudekum, Terminated

The Law Firm of Querry and Harrow, Terminated Their Service

The Attorney of this Motion was cleared on the basis that the Plaintiff informed the Defendant that he was not part of the scheme to deprive Plaintiff of his right to file a claim. Attached hereto are copies of documents in support of Plaintiff's claims.

5. The actions taken by the Defendant does not, in itself, cure the problem. The Defendant says that although you have a valid Complaint, the

Courts say that we don't have to repair the property; on the other hand, if the Court says we must repair the property, we will honor that ruling. Plaintiff asked whether that's cheating me?

The Defendant said we are not cheating you, it's not our ruling. In conclusion, Plaintiff asked how can the Court dismiss a claim if none has been filed? The Defendant said that your question is misdirected; we know that we don't handle valid claims in this manner.

6. The jurisdictional question here is whether this Court had jurisdiction to dismiss on a motion where there is no claim filed and there is no Defendant without a claim?

7. Whether the June 25, 1992, dismissal of Plaintiff's Complaint deprived the Plaintiff of due process and equal protection of the law?

WHEREFORE, in light of the Illinois Insurance Code, as well as the legislative statute requiring the Plaintiff to file a claim, Plaintiff respectfully prays that this Honorable Court reverse the June 25, 1992 dismissal and declare the denial of both claims attached hereto violates the Law, as well as the equal protection clause guaranteed by the U.S. Constitution so that the Defendant out of being a good neighbor, repair the property.

Respectfully submitted,

ROBERT WILSON

ARGUMENT

At the outset, it must be noted that Judicial Misconduct has made it virtually impossible for the Appellant to obtain the Legal Assistance of counsel to present his Appeal in the language of the Law and with the protection of the Law.

On December 6, 1994, the Honorable Circuit Judge Daniel Manion denial of Appointment for Counsel have situated the Appellant into a position of choice: swim or die. The Appellant will give his best to accomplish an understanding of the issues presented.

While there is no evidence in the record of proceedings to support the District Court Judge William T. Hart's allegation of three times stated in his Orders, alleging that the Appellant filed a claim with his insurer, State Farm Fire and Casualty Company, he nevertheless continues to give this erroneous impression, and it has defeated the Appellant's meritorious cause of actions. In rebuttal to this erroneous impression, the Appellant would direct the court's attention to Appendix 1-G, *Notice of Motion* presented to the Chancery Judge Siegan, wherein the Appellant was seeking to file a claim with his insurer long before he was assigned to Judge Hart. This fact reveals itself again in Appendix 1-H, *Appellant Under Oath* when asked:

> Q. Do you have a letter making the claim?
>
> A. No, I didn't make no claim. Even State Farm acknowledged that the Appellant did not file a claim. On that alone, the Appellant should prevail.

You cannot take jurisdiction over that which does not exist. The Appellant would ask the Honorable Court to recognize that these extra charges were placed upon the Appellant by Judge Hart only. Lead Counsel, Attorney Frederick J. Sudekum, has done a marvelous job in deceiving the Courts. He nevertheless, has never accused the Appellant of filing a claim.

Considering Judge Hart's allegations, this Court, I am sure, expects to find a copy of the alleged claim in the file or discover that Judge Harold Seigan of the Chancery Court, as well as Judge Hart, clearly had no claim before them to dismiss in violation of the Ill. Rev. Statute 1985 Ch. 73 P.755-1 of the Illinois Code of Civil Procedure. Statutes are none discretionary: it is well settled that statutory language must be given its plain, ordinary meaning and, in enforcing statutory provisions, Courts are bound by the clear and un-ambiguous language itself. *Mack v. Seaman*, (1983) 113 Ill. App. 3d 581, 498, N.E.2d 1217. *Remarriage of Freeman*, (1985), 106 Ill. 2d 290, 297, *People v. Miller*, (1984) 128 Ill. App. 3d 574, 580, *Chicago Midwest Meat Association v. City of Evanston*, (1981) 96 Ill. App.3d 966 969, 422, N.E.2d 205.

When we consider the due process clause, the legal proceeding in which a person is entitled to protect his interest is clear evidence of depriving the Appellant on State Farm's acknowledgement that their investigation reveals no claims filed by the Appellant. Issue 3 is self-supported on the foundation that Attorneys and the Courts have denied the Appellant the assistance of counsel. Issue 4 is obvious and needs not be addressed. The remaining issues are easily determined by the record and the attached documents in which the Appellant builds his argument which is supported by Rules of Law. The issue that the Appellant rush to explore is the conduct of Lead Counsel, Attorney Frederick J. Sudekum, III, he has perjured himself according to Section 1746 of Title 28 U.S.C. He has abandoned his code of conduct by concealing a material fact so important until it determines the outcome of this case.

<u>There is no claims filed here</u> and Attorney Sudekum must acknowledge this, or continue deceiving the Courts. This Attorney has been cheating your Appellant out of his rights to file claims with his insurer, State Farm Fire and Casualty Company.

The Appellant contends that Attorney Frederick J. Sudekum, III, conduct is deceptive and designed to continue fooling all of the Judges, knowing your Appellant is helpless, without the assistance of counsel. He placed the Appellant under oath twice, which subjects the Appellant to imprisonment, knowingly aware that there is no claims filed here. The Appendix 1-M, *Protest Letter to State Farm* will show that Attorney Sudekum is a Doctor, on documents and have the power of persuasion to bring Attorney Albert DeVito into his determined desire to cheat your Appellant and caused Attorney DeVito's termination of service from the Law Firm of Querry and Harrow. And Lead Counsel must take full responsibilities for causing that termination of service. Not only that he filed a Motion in the Seventh Circuit Court of Appeals in the name of Attorney Michael Resis who was not aware of his name being used.

Nearly caused his termination of service, except, however, for the Appellant informing State Farm that he was not part of the scheme to deprive the Appellant of his right to file claims with his insurer, State Farm Fire and Casualty Company.

Now, Attorney Sudekum has brought into play another Attorney, Barbara Turotsy, to aid him in furtherance of this deception. Attorney Turotsy is not a member of the Law Firm of Querry and Harrow, she is from Lead Counsel's office and she is fully aware of the gravity of this case. Yet, she lends herself to perjury conduct.

The Appellant filed charges of perjury and fraud before Judge Duff against Lead Counsel, Case No. 94 C-1071. The issue was dismissed on procedures; however, the evidence of perjury was there. This is the kind of person the Honorable Daniel Manion forced the Appellant to challenge in his denial of Appointment of Counsel at the Appellants Expense. The U.S. Constitution not only guarantees the Appellant not to be treated in this way;

it also guarantee's the Appellant that it would not deny to any person within its jurisdiction, the equal protection of the Law.

The Honorable Judge Hart, as well as Judge Manion, deprived your Appellant of his right to due process and equal protection of the Law guaranteed under the First Section of the 14th Amendment to the U.S. Constitution.

In nearing this conclusion, the Appellant has witnessed many titles of Honor. The only honor in this record is that of State Farm, when it stated, "...we are not cheating you, it's not our ruling ..." The act of cheating becomes self-evident through the denial of Appointment of Counsel, at the Appellant's Expense, no honorable person would suggest here, that State Farm doesn't owe the Appellant a thing under two valid insurance policies. Having all of these strenuous rules in which the enforcer themselves don't honor.

In noting the rules governing misconduct, Lead Counsel, Frederick J. Sudekum, has committed a Hitler crime upon the judicial system and violated the Illinois Code of Professional responsibility and brought the Courts and Legal Profession into disrepute.

WHEREFORE, the Appellant contends that there is only one issue before this Honorable Court to be decided and that is the question of whether Justice will prevail.

The Appellant prays for the Reversal of the June 25, 1992 dismissal, remanded and that it be ordered that the Appellant be allowed to file claims with his insurer, State Farm Fire and Casualty Company.

The founding fathers should see me know, and what the courts have done to a helpless Appellant. It is a worthy conjecture that they may deny themselves to see how their shoes are worn.

Respectfully submitted,

ROBERT WILSON, *Pro Se*
15630 South Loomis Street
Harvey, Illinois 60426
(708) 339-0092

APPENDIX

APPENDIX 1-A

(Reserved for use by the Court)

ORDER

On June 27, 1983, Plaintiff Robert Wilson experienced damage and vandalism loss of property. Plaintiff filed an insurance claim with Defendant - State Farm Fire and Casualty Company ("State Farm"). State Farm investigated Plaintiff's claim and denied payment on the basis that State Farm did not insure the property at the time of loss. Almost four years after the loss occurred, on March 3, 1987, Plaintiff filed a six-count complaint in the Circuit Court of Cook County, Illinois against State Farm. Plaintiff's suit was dismissed with prejudice in a final order of the Circuit Court on the basis that Plaintiff had failed to file his action within one year from the date of loss in compliance with policy conditions. *Wilson v. State Farm Fire & Casualty*, No. 87 CH 2006 (Cir. Ct. Nov. 16, 1988), *aff'd*, No. 1-89-0287 (1st Dist. May 23, 1990). The Illinois Supreme Court denied Plaintiff's petition for leave to appeal, *Wilson v. State Farm Fire & Casualty*, No. 71136 (Feb. 6, 1991), and the Supreme Court of the United States denied Plaintiff's petition for certiorari. *Wilson v. State Farm Fire & Cas.*, No. 91-123 (Oct. 7, 1991).

On March 12, 1992, Plaintiff filed this suit alleging violation of his constitutional right to due process and equal protection pursuant to the Fourteenth Amendment. State Farm now moves to dismiss.

Plaintiff complains that he was denied due process of law and equal protection because the Circuit Court barred him from filing a claim. However, Plaintiff was barred by the legally applicable policy condition, not by the Circuit Court. See *Wilson v. State Farm Fire & Cas.*, No. 1-89-0287 (1st Dist. May 23, 1990). Plaintiff has not set forth any valid constitutional claim for denial of due process or equal protection. He filed a claim; State Farm denied it; he sued and appealed that denial in state court; and he filed this lawsuit. The state court proceedings, including the Appellate Court opinion affirming the dismissal of Plaintiff's case, afforded Plaintiff due process and equal protection of the laws.

IT IS, THEREFORE ORDERED that the motion of Defendant State Farm Fire and Casualty Company to dismiss Plaintiff's complaint is granted. The Clerk of the Court is directed to enter judgement against Plaintiff Robert Wilson and in favor of Defendant State Farm Fire and Casualty Company dismissing this case with prejudice and awarding costs to defendant.

ENTER:

/s/ William T. Hart
UNITED STATES DISTRICT JUDGE

Dated: June 25, 1992

APPENDIX 1-B

(Reserved for use by the Court)

ORDER OF DISTRICT COURT

Pro se Plaintiff, Robert Wilson, filed suit in this court on March 12, 1992 alleging violations of due process and equal protection under the Fourteenth Amendment. On June 25, 1992, this court granted Defendant, State Farm's motion to dismiss and Plaintiff appealed. On September 30, 1992, the Seventh Circuit summarily affirmed this court's dismissal. *Wilson v. State Farm Fire & Cas. Co.*, No. 92-2977 (7th Cir. Sept. 30, 1992). Plaintiff is again before this court on motions for the appointment of counsel and what Plaintiff terms a motion to present a jurisdictional question. Plaintiff argues this court lacked jurisdiction to dismiss his case on June 25, 1992. Any argument regarding this court's jurisdiction is precluded by the Seventh Circuit's ruling.

To recap Plaintiff's predicament, on June 27, 1983, Plaintiff's property was damaged. State Farm denied payment under a policy on the basis that no policy was in force at the time of the loss. Some four years later, Plaintiff filed a complaint in the Circuit Court of Cook County, Illinois, against State Farm. Plaintiff's state court action was dismissed for not having been filed within one year of the date of loss, as required under the policy. The Circuit Court's dismissal was affirmed by the Appellate Court, the Illinois Supreme Court denied a petition for leave to appeal and the United States Supreme Court denied writ of certiorari.

Plaintiff's present motion argues he was covered by a policy at the time of the loss, but that State Farm's agents and attorneys worked a fraud to deny him coverage. In support of his argument, Plaintiff notes that State Farm terminated the claim agent and severed its relationship with the attorneys involved and their firm. State Farm apparently continues to deny coverage.

This court construes Plaintiff's pro se submission as including a motion for relief from judgement based upon newly discovered evidence under Fed. R. Civ. P. 60(b)(2). That rule requires such motions to be made within one year of the judgement, order or proceeding. Plaintiff's motion comes a full two years after this court's judgement, and is, therefore, not timely. Furthermore, even if Plaintiff's motion were timely, allegations of fraud on the part of State Farm would not form the basis of a due process or equal protection claim. If Plaintiff has evidence that State Farm committed a fraud, it may be possible for Plaintiff to file a new complaint in an appropriate court. However, Plaintiff's allegations are not a basis for amending this court's prior order or for appointing counsel in this case.

IT IS THEREFORE ORDERED that Plaintiff's motions are denied.

ENTERED:

/s/ Hart

DATED: June 27, 1994

APPENDIX 1-C

UNITED STATES COURT OF APPEALS *MB*

For the Seventh Circuit
Chicago, Illinois 60604

September 30, 1992

Before

Hon. RICHARD D. CUDAHY, *Circuit Judge*

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. JOEL M. FLAUM, *Circuit Judge*

ROBERT WILSON, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of
No. 92-2977 v.	)	Illinois, Eastern Division
STATE FARM FIRE AND CASUALTY COMPANY, Defendant-Appellee	)	No. 92 C 1770 William T. Hart, Judge

This matter comes before the court for its consideration of the "MOTION FOR COPY OF CLAIM" filed herein on September 8, 1992, by the pro se Appellant. On consideration thereof,

IT IS ORDERED that the motion is DENIED and the order of the District Court dismissing Appellant's claim is summarily AFFIRMED.

APPENDIX 1-D

UNITED STATES COURT OF APPEALS ***jlm***

For the Seventh Circuit
Chicago, Illinois 60604

December 6, 1994

Before

Hon. DANIEL A. MANION, *Circuit Judge*

ROBERT WILSON, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of
No. 94-2646 v.	)	Illinois, Eastern Division
STATE FARM FIRE AND CASUALTY INSURANCE COMPANY	)	No. 92 C 1770
Defendant-Appellee	)	William T. Hart, Judge

Upon consideration of **"MOTION TO APPOINT COUNSEL TO REPRESENT THE APPELLANT'S MOTION ON APPEAL AT THE APPELLANT'S EXPENSE"**, filed July 29, 1994, by the pro se Appellant,

IT IS ORDERED that the motion is **DENIED** and briefing will proceed as follows:

1. The brief and required short appendix of the Appellant are due January 6, 1995.
2. The brief of the Appellee is due February 6, 1995.

3. The reply brief of the Appellant, if any, is due February 20, 1995.

APPENDIX 1-E

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 12, 1995*

Decided September 13, 1995

Before

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

ROBERT WILSON, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 94-2646 v.	)	No. 92 C 1770
STATE FARM FIRE AND CASUALTY INSURANCE COMPANY, Defendant-Appellee	)	William T. Hart, Judge

ORDER

Robert Wilson filed suit in March of 1992 alleging a violation of his due process and equal protection rights. The District Court

granted the Defendant's motion to dismiss and we affirmed. *Wilson v. State Farm Fire & Cas. Co.*, No. 92-2977 (7th Cir. Sept. 30, 1992) (unpublished order). In 1994, Wilson argued to the District Court that it should vacate its judgement and that he is entitled to representation by counsel. The District Court, construing Wilson's request as one under Federal Rule of Civil Procedure 60(b) (2), denied Wilson's motion as untimely, and alternatively, insufficient. We affirm.

Wilson's suit stems from his claim that he was denied payment by State Farm for damage to his property in 1983. State Farm denied the claim because no policy was in effect at the time of the damage. Wilson first turned to the state court, but his action was dismissed because he failed to bring it within one year of the date of loss. The decision was affirmed by the Illinois Appellate Court. The Illinois Supreme Court denied a petition for leave to appeal. Wilson ultimately requested review from the Supreme Court of the

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34(a); Cir. R. 34(f). Appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

United States but was denied certiorari. Thereafter, Wilson brought suit in Federal Court in 1992 and we affirmed the District Court's

dismissal.

Wilson's contends that the District Court lacked jurisdiction to dismiss his claim in 1992 and that the court should have appointed counsel to represent him. We agree with the District Court that Wilson's motion is properly construed as one under Rule 60(b). A motion brought under Rule 60(b)(1)-(3) must be made within one year of the final judgement, order or proceeding. See Fed. R. Civ. P. 60(b) (relief from final judgement for mistake, inadvertence, surprise, newly discovered evidence, or fraud). A motion brought under Rule 60(b)(4)-(6) must be made within a reasonable time of the final judgement.

Relief under Rule 60(b) is an extraordinary remedy that is granted only in exceptional circumstances. *Dickerson v. Board of Education of Ford Heights, Ill.*, 32 F.3d 1114, 1116 (7th Cir. 1994). The District Court construed Wilson's motion under Rule 60(b)(2) concerning newly discovered evidence of fraud. Because his motion was not brought within a year of judgement, it is untimely and the District Court did not abuse its discretion. See *United States v. Golden Elevator, Inc.*, 27 F.3d 301, 303 (7th Cir. 1994). To the extent that Wilson alleges that the District Court lacked jurisdiction to dismiss his complaint, we cannot say that the District Court abused its discretion. See *Bally Export Corp. v. Balicar, Ltd.*, 804 F.2d 398, 400 (7th Cir. 1986) (if the underlying judgement is void, it is a per se abuse of discretion for a District Court to deny a movant's motion under Rule 60(b) (4)). Wilson points only to the fact that he never

filed a claim with State Farm and, therefore, the District Court lacked jurisdiction to adjudicate his claim. Wilson submitted his dispute with State Farm concerning his coverage to the District Court. He cannot now change his tune and claim that the basis of his own suit is questionable. We conclude that the District Court did not abuse its discretion in denying Wilson's motion to vacate its judgement.

As for Wilson's claim that he was entitled to counsel, we have repeatedly held that there is no right to counsel in a civil case. See *Barkauskus v. Lane*, 946 F.2d 1292, 1294 (7th Cir. 1991); *Caruth v. Pinkney*, 683 F.2d 1044, 1048 (7th Cir. 1982), *cert. denied*, 459 U.S. 1214 (1983). Although unable to procure counsel for himself, Wilson has demonstrated that he is quite capable of making arguments and pursuing his suits in both State and Federal court. We cannot say that the District Court abused its discretion in denying Wilson's request for counsel.

AFFIRMED.

APPENDIX 1-F

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

December 13, 1995

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

ROBERT WILSON, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of
No. 94-2646 v.	)	Illinois, Eastern Division
STATE FARM FIRE AND CASUALTY INSURANCE) COMPANY, Defendant-Appellee.	)	No. 92 C 1770
	)	William T. Hart Judge

ORDER

On consideration of the petition for rehearing filed in the above-entitled case on October 5, 1995, by Plaintiff-Appellant, all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

APPENDIX 1-G

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT WILSON	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 92 C 1770
	)	
STATE FARM FIRE AND	)	
CASUALTY COMPANY,	)	Hon. William T. Hart,
	)	Judge Presiding
Defendant.	)	

MOTION FOR APPOINTMENT OF COUNSEL
AT PLAINTIFF'S EXPENSE

Now comes the Plaintiff, Robert Wilson, appearing pro se, and respectfully request of this honorable court to appoint counsel to represent the Plaintiff's motion for the following reasons: At the first stage, my attorney obviously sold me out and making way for an injustice to pass through the court. Attorneys recognize something is wrong here so they refuse to represent me which caused me to appear on June 25, 1992 before this court pro se. They viewed my case as being a conspiracy between the courts and State Farm.

The actions taken by State Farm is unquestionably no part of a conspiracy on their part. Since November 17, 1993 diligent efforts for six months now to obtain counsel has been in vain. They now tell me

that they don't want to get involved in a case where the defendant disproved the court. A few weeks ago, I met with Attorney Michael Fay of 2638 South California Avenue, TO REPRESENT ME. Attorney Fay read half of a page and all but threw me out. Walked me to the door and locked it. He refused to sell me legal advice. The Plaintiff cannot defend his rights against counsel of record and fear *pro se* due to the court's treatment on June 25, 1992. The record will show that Plaintiff asked the court to order counsel to produce a copy of the claim. Had the request been granted it would have clearly and convincingly established that no claim exists for this court to dismiss and the property could have been repaired by now.

Instead, the court chose to accuse the Plaintiff three times in his order of having filed a claim. The attorney throughout these proceedings both State and Federal has never uttered such words. Further, a reading of the court's order that Plaintiff filed a six count complaint almost four years after the loss occurred. The documents attached hereto disproved that allegation. The loss occurred on June 27, 1983 and was not denied until March 5, 1986. Plaintiff filed his action on March 3, 1987. In an attempt to obtain a copy of the claim, the Defendant attached a copy of the court's order and the Seventh Circuit Court of Appeal denied Plaintiff's motion and summary affirmed the District Court order and upheld a grave injustice. Under those conditions the Plaintiff is justified in his request for counsel as well as his fear of the court. Wherefore, Plaintiff prays for appointment of counsel and that this honorable court concede to the

fact that the law by court rules in favor of the Plaintiff.

Respectfully submitted,

ROBERT WILSON

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 92 C 1770
	)	
STATE FARM FIRE AND	)	
CASUALTY COMPANY,	)	Hon. William T. Hart,
	)	Judge Presiding
Defendant.	)	

MOTION TO WITHHOLD RULING ON MOTION TO PRESENT A JURISDICTIONAL QUESTION UNTIL MOTION FOR APPOINTMENT OF COUNSEL IS RECEIVED

Now comes the Plaintiff, Robert Wilson, proceeding pro se, and respectfully request of this Honorable court to stay the ruling on Plaintiff motion to present a jurisdictional question until the motion for appointment of counsel has been decided.

If the motion for appointment of counsel is denied, Plaintiff request that the motion to present a jurisdictional question be stayed pending a ruling by the Seventh Circuit Court of Appeals.

The refusal of legal representation based on judicial misconduct which leaves the Plaintiff unable to defend his constitutional rights is an issue for the reviewing court. Had it not been for the ORDER

WHICH CONTROLLED THE REVIEWING COURT DECISION, which led the Seventh Circuit Court of Appeals to believe that Plaintiff waited almost four years to file a one year limitation period, this issue, beyond a doubt would have been decided by now.

Respectfully submitted,

_____

ROBERT WILSON

Supreme Court, U. S.
F I L E D
MAR 15 1996
CLERK

No. 95-1285

In The

Supreme Court of the United States

October Term, 1995

ROBERT WILSON,

Petitioner,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioner has properly demonstrated that the September 13, 1995 decision of the United States Court of Appeals for the Seventh Circuit warrants review by the Supreme Court of the United States?

2. Whether the United States Court of Appeals for the Seventh Circuit properly found that the United States District Court for the Northern District of Illinois did not abuse its discretion in denying Petitioner relief from the prior judgment entered on June 25, 1992 in favor of Respondent?

3. Whether the United States District Court for the Northern District of Illinois and United States Court of Appeals for the Seventh Circuit properly denied Petitioner's motion for appointment of counsel?

4. Whether the United States District Court for the Northern District of Illinois properly dismissed Petitioner's Complaint against Respondent by its order of June 25, 1992?

LIST OF PARTIES TO THE PROCEEDING

Petitioner is Robert Wilson, who was the Plaintiff-Appellant in the proceedings before the United States District Court for the Northern District of Illinois and before the United States Court of Appeals for the Seventh Circuit. Respondent is State Farm Fire & Casualty Company, which was the Defendant-Appellee before the United States District Court for the Northern District of Illinois and before the United States Court of Appeals for the Seventh Circuit.

RULE 29.6 DISCLOSURE STATEMENT

Docket No.: 95-1285

Short Title: Robert Wilson v. State Farm Fire and Casualty Company

(1) The full name of every party or amicus the attorney represents in the case:

State Farm Fire and Casualty Company

(2) If such party or amicus is a corporation:

(i) Its parent corporation, if any:

State Farm Mutual Automobile Insurance Company

(ii) Its non-wholly owned subsidiaries, if any:

None

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STATEMENT OF JURISDICTION

The Respondent believes Petitioner's Statement of Jurisdiction to be incomplete and therefore files the following jurisdictional statement.

On or about March 12, 1992, Petitioner, Robert Wilson, filed a complaint against Respondent, State Farm Fire & Casualty Company, in the United States District Court for the Northern District of Illinois, entitled *Wilson v. State Farm Fire & Casualty Company*, and docketed to No. 92 C 1770. In his complaint, Petitioner alleged violations of due process and equal protection under the Fourteenth Amendment to the United States Constitution. Accordingly, Petitioner alleged that subject matter jurisdiction in the United States District Court was based upon the provisions of 28 U.S.C. § 1331 (federal question jurisdiction). The United States District Court dismissed Petitioner's action on June 25, 1992 and, on appeal, the United States Court of Appeals for the Seventh Circuit summarily affirmed the decision of the United States District Court by an unpublished order dated September 30, 1992.

On or about June 9, 1994, Petitioner filed two motions with the United States District Court for the Northern District of Illinois. Petitioner filed a motion to present a jurisdictional question, which raised two issues: (1) whether the District Court had jurisdiction to dismiss his complaint on June 25, 1992 when "there is no claim filed, and there is no defendant without a claim;" and (2) whether the District Court's dismissal of the complaint by order dated June 25, 1992 deprived Petitioner of due process and equal protection of the law. Petitioner also filed a motion for appointment of counsel.

Both of Petitioner's motions were denied by the United States District Court by order dated June 27, 1994. On July 5,

1994, Petitioner filed a motion to withhold ruling on the motion to present a jurisdictional question until the motion for appointment of counsel was resolved. This motion was denied by the District Court by order dated July 6, 1994.

Petitioner thereafter filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit. By order dated September 13, 1995, the United States Court of Appeals for the Seventh Circuit determined that the District Court did not abuse its discretion in denying Petitioner's Motion to Vacate the judgment of June 25, 1992. Furthermore, the United States Court of Appeals concluded that the District Court did not abuse its discretion in denying Petitioner's Motion for Appointment of Counsel.

Petitioner filed a petition for rehearing which was denied by the United States Court of Appeals for the Seventh Circuit by order dated December 13, 1995. Accordingly, this Honorable Court has jurisdiction to review the decision of the United States Court of Appeals dated September 13, 1995 pursuant to Supreme Court Rule 13.1 and 13.4.

STATEMENT OF THE CASE

The Respondent also believes that Petitioner's Statement of the Case to be materially incorrect and, therefore, files the following Statement of the Case, setting forth the pertinent factual and procedural background.

On or about March 12, 1992, Petitioner commenced an action against Respondent in the United States District Court for the Northern District of Illinois. In his complaint, Petitioner alleged that on or about February 7, 1983, he renewed his homeowner's insurance for coverage on property located at 15420 South Vine Street, Harvey, Illinois and that on June 27,

1983, a tenant damaged his property. Petitioner further alleged that his claim with Respondent was denied or about March 5, 1986 and that by reason of the denial of his claim by Respondent, he had been denied due process and equal protection under the Fourteenth Amendment of the United States Constitution.[1]

Petitioner's complaint was dismissed with prejudice by the United States District Court on June 25, 1992, on the grounds that Petitioner had not set forth any valid constitutional claim. The decision of the United States District Court was thereafter affirmed by the United States Court of Appeals for the Seventh Circuit on September 30, 1992.

On or about June 9, 1994, Petitioner filed with the United States District Court motions to present a jurisdictional question and motion for appointment of counsel. Petitioner's motion to present a jurisdictional question raised two issues: (a) whether the District Court had jurisdiction to dismiss the complaint on June 25, 1992 when "there is no claim filed, and there is no defendant without a claim;" and (b) whether the District Court's

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1. Prior to his federal court action, Petitioner filed an action arising out of the same loss of June 27, 1983 against Respondent in the Circuit Court of Cook County on or about March 3, 1987, docketed to No. 87 CH 2006. Petitioner's state court action was dismissed with prejudice by the Circuit Court of Cook County, Illinois on November 16, 1988 on the basis that Petitioner failed to file his action within one year of the date of loss in compliance with the provisions of the policy of insurance. The Circuit Court of Cook County also denied Petitioner's motion to reconsider on January 20, 1989. The dismissal of Petitioner's complaint was subsequently affirmed by the Appellate Court of Illinois for the First District, Third Division on May 23, 1990. The Appellate Court of Illinois also denied Petitioner's petition for rehearing on October 31, 1990. The Illinois Supreme Court thereafter denied Petitioner's petition for leave to appeal by order dated February 6, 1991. Finally, Petitioner filed a petition for writ of certiorari, which was denied by the United States Supreme Court on October 7, 1991.

dismissal of the complaint by order dated June 25, 1992 deprived Petitioner of due process and equal protection.

Both of Petitioner's motions were denied by the United States District Court by order dated June 27, 1994. The District Court construed Petitioner's motion as a motion for relief from judgment pursuant to F.R.C.P. 60(b) and concluded that such motion was untimely. The District Court further determined that even if said motion was timely, Petitioner's allegations of fraud on the part of Respondent would not form the basis of a due process or equal protection claim.

On or about July 5, 1994, Petitioner filed a motion to withhold ruling on his motion to present a jurisdictional question until the motion for appointment of counsel was resolved. Petitioner's motion to withhold ruling was denied by the United States District Court by order dated July 6, 1994.

Petitioner thereafter appealed to the United States Court of Appeals for the Seventh Circuit. In conjunction with his appeal, Petitioner filed a motion to appoint counsel on July 29, 1994, however, the Court of Appeals denied that motion by order dated December 6, 1994.

By order dated September 13, 1995, the Court of Appeals concluded that Petitioner's motion to present a jurisdictional question was properly construed by the District Court as a motion for relief under F.R.C.P. 60(b). Furthermore, the Court of Appeals held that the motion was untimely since the motion was not filed within one year of the judgment from which relief was sought. Moreover, the Court of Appeals concluded that the District Court did not abuse its discretion in denying Petitioner's motion for relief from the prior judgment. Finally, the Court of Appeals upheld the District Court's denial of Petitioner's motion for appointment of counsel.

Although Petitioner filed a petition for rehearing, it was denied by the Seventh Circuit Court of Appeals by order dated December 13, 1995.

SUMMARY OF ARGUMENT

Initially, Respondent asserts that Petitioner has not demonstrated that the decision rendered by the United States Court of Appeals for the Seventh Circuit dated September 13, 1995 warrants review by this Honorable Court. Petitioner has not established that the Seventh Circuit Court of Appeals rendered a decision in conflict with the decision of another United States court of appeals on the same question, nor has he shown that the Seventh Circuit Court of Appeals has decided a federal question in a way in conflict with a state court of last resort and/or with the decisions of this Court. Moreover, Petitioner has not established that this case presents an important question of federal law that has not been, but should be, decided by this Court.

Although Petitioner appears to argue in his Petition for Writ of Certiorari that the Court of Appeals, in reaching its decision of September 13, 1995, departed so far from the accepted and usual course of judicial proceedings that this Court must exercise its supervisory power, review of the decision discloses that this matter was clearly decided by the court fully in accordance with existing federal case law.

Furthermore, for the reasons more fully outlined below, Respondent contends that the court below properly determined that Petitioner was not entitled to relief from the prior District Court judgment of June 25, 1992 *and* that he was not entitled to appointed counsel. Again, the decision of the Court of Appeals was entirely consistent with applicable federal precedent.

REASONS FOR DENYING THE WRIT

I.

PETITIONER HAS FAILED TO ESTABLISH THAT THE DECISION OF SEPTEMBER 13, 1995 OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT WARRANTS REVIEW BY THE UNITED STATES SUPREME COURT.

Initially, Respondent notes that Petitioner has failed to demonstrate that the Seventh Circuit Court of Appeals' ruling of September 13, 1995 merits review by this Court. United States Supreme Court Rule 10 sets forth the various criteria which may be considered by the United States Supreme Court in deciding whether to grant a petition for writ of certiorari. These criteria include, but are not limited to: (1) whether the federal Court of Appeals has decided the case in conflict with the decision of another federal Court of Appeals on the same matter; (2) whether the federal Court of Appeals has decided a federal question in a way that is in conflict with a decision of a state court of last resort; (3) whether the federal Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the lower court; or (4) whether the federal Court of Appeals has decided an important question of federal law which has not been but should be settled by the United States Supreme Court or has decided a federal question in conflict with applicable decisions of the United States Supreme Court.

It would appear that Petitioner argues, under United States Supreme Court Rule 10, that the federal District Court and/or Seventh Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings that the exercise of the Supreme Court's power is necessary. Specifically, Petitioner

appears to argue that the courts below did not require proper jurisdiction before deciding this case because he asserts that he never filed a claim with Respondent.

However, Petitioner cites no pertinent case law in support of this proposition. Moreover, as the Seventh Circuit Court of Appeals correctly noted, Petitioner "submitted his dispute with State Farm concerning his coverage to the District Court. He cannot now change his tune and claim that the basis of his own suit is questionable." Thus, clearly, Petitioner has not established that the Seventh Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings.

Furthermore, Petitioner has cited *no* federal case law which would demonstrate that the Seventh Circuit Court of Appeals rendered a decision in this matter which conflicts with the decision of another federal Court of Appeals on the same question. Nor has Petitioner cited any federal or state case law which shows that the ruling of the Seventh Circuit Court of Appeals on a federal question conflicts with the ruling of a state court of last resort. Furthermore, Petitioner has cited *no* case law demonstrating that the Seventh Circuit Court of Appeals decided a federal question in conflict with the decisions of this court.

Finally, the questions presented in this case regarding when relief under F.R.C.P. 60(b) is appropriate as well as the right of a litigant to counsel in a civil case have previously been ruled upon in a similar manner by this court and/or other federal Courts of Appeals. In fact, the decision of the Seventh Circuit Court of Appeals in this case is entirely compatible with applicable federal precedent.

For example, other federal Courts of Appeals, as well as this court, have applied an abuse of discretion standard in determining whether a federal district court properly denied

relief under F.R.C.P. 60(b). *See Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 263, 98 S. Ct. 556 (1978); *De la Torre v. Continental Insurance Co.*, 15 F.3d 12, 14 (1st Cir. 1994); *Reuber v. United States*, 829 F.2d 133, 141 (D.C. Cir. 1987). Additionally, Respondent notes that, like the Seventh Circuit Court of Appeals in the present case, the Court of Appeals for the Ninth Circuit has held that a one year limitation applies to motions for relief under F.R.C.P. 60(b) when based upon fraud. *Scott v. Younger*, 739 F.2d 1464 (9th Cir. 1984).

Furthermore, the ruling of the Seventh Circuit Court of Appeals with respect to Petitioner's request for appointment of counsel is likewise consistent with applicable federal precedent. *See Lassiter v. Department of Social Services*, 452 U.S. 18, 68 L. Ed. 2d 640 (1981). In *Lassiter*, this Court held that the trial court did not err in refusing to appoint counsel in a proceeding to terminate parental rights. The court in *Lassiter* noted that under the Due Process Clause, an indigent litigant has the right to court-appointed counsel only when, if he loses, he may deprived of personal liberty. *Lassiter*, 452 U.S. at 26.

Similarly, in *Nelson v. Redfield Lithograph Printing*, 728 F.2d 1003, 1004 (8th Cir. 1984), the Eighth Circuit Court of Appeals noted that there is no constitutional or statutory right for an indigent litigant to have counsel appointed in a civil case. *See also Bethea v. Crouse*, 417 F.2d 504, 505 (10th Cir. 1969).

Because Petitioner has not demonstrated that the decision of the Seventh Circuit Court of Appeals warrants review by this Court, the Petition for Writ of Certiorari should be denied.

II.

PETITIONER WAS NOT ENTITLED TO RELIEF FROM THE PRIOR JUDGMENT IN FAVOR OF RESPONDENT.

As set forth above, Petitioner filed two motions on or about June 9, 1994. These motions were construed by the United States District Court as a motion for relief from judgment pursuant to F.R.C.P. 60(b). The District Court denied Petitioner relief from its prior judgment of June 25, 1992 entered in favor of Respondent, holding that Petitioner's motion was untimely. The District Court further concluded that even if Petitioner's motion was deemed to be timely filed, the allegations of fraud on the part of Respondent would not form the basis of a due process or equal protection claim.

On appeal, the United States Court of Appeals upheld the determination of the District Court. For the reasons set forth below, Respondent asserts that the Court of Appeals correctly determined that Petitioner was not entitled to relief under F.R.C.P. 60(b).

A. Scope of Review

F.R.C.P. 60(b) provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:
>
> > (1) mistake, inadvertence, surprise, or excusable neglect;

> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (6) any other reason justifying relief from the operation of the judgment.

This Rule further provides that a motion pursuant to Rule 60(b) shall be made within a reasonable time, and for reasons (1), (2), and (3), the motion must be made no more than one year after the judgment, order or proceeding was entered or taken. *See United States v. Golden Elevator*, 27 F.3d 301, 303 (7th Cir. 1994); *Central States, Southeast & Southeast Areas Pension Fund v. Conaway*, 1991 U.S.Dist. LEXIS 15495 (N.D. Ill. 1991) (motion made under subsections 1-3 must be made within one year after judgment or order entered; as to all Rule 60(b) subsections, the motion must be made within a reasonable time).

Whether a motion for relief from judgment has been filed within a reasonable period of time must be determined by

examining the particular facts of each case, the reason for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and the prejudice to the other party if the judgment is revisited. *Margoles v. Johns*, 798 F.2d 1069, 1073 (7th Cir. 1986), *cert. denied*, 482 U.S. 905, 107 S. Ct. 2482 (1987).

A motion to vacate a judgment or order pursuant to Rule 60(b) is addressed to the sound discretion of the district court and the denial of a Rule 60(b) motion may be reversed only when the district court has abused its discretion. *Williams v. Hatcher*, 840 F.2d 993, 995 (7th Cir. 1989). Abuse of discretion in denying a Rule 60(b) motion is established only when no reasonable person could agree with the district court; there is no abuse of discretion if a reasonable person could not disagree as to the propriety of the court's action. *Williams*, 840 F.2d at 995; *see also United States v. Payne*, 741 F.2d 887, 895 (7th Cir. 1984) (abuse of discretion standard to be applied when reviewing district court's denial of relief under Rule 60(b)).

Furthermore, Rule 60(b) is an extraordinary remedy and should be granted only in exceptional circumstances. *Dickerson v. Board of Education of Ford Heights, Illinois*, 32 F.3d 1114, 1116 (7th Cir. 1994); *Central States, Southeast & Southeast Areas Pension Fund v. Conaway*, 1991 U.S.Dist. LEXIS 15495 (N.D. Ill. 1991). There is a strong policy in favor of the finality of judgments; judgments in civil cases fix the rights of the parties and entitle them to go about their live and may be re-opened only for extraordinary reasons. *Margoles v. Johns*, 798 F.2d 1069, 1072 (7th Cir. 1986), *cert. denied*, 482 U.S. 905, 107 S. Ct. 2482 (1987).

B. The Denial of Relief under Rule 60(b) Was Proper

With the foregoing scope of review in mind, Respondent asserts that the Court of Appeals properly determined that

Petitioner was not entitled to relief from the prior judgment in favor of Respondent entered on June 25, 1992.

As stated by the District Court in its opinion, to the extent that Petitioner was seeking relief under subsection 3 of Rule 60(b) based upon the alleged fraud or misconduct of an adverse party, such motion was untimely. As set forth above, the District Court previously dismissed Petitioner's complaint with prejudice on June 25, 1992 and this decision was summarily affirmed by the Court of Appeals on September 30, 1992. Petitioner's motions of June 9, 1994 alleged that Respondent fraudulently denied him coverage under a policy of insurance. However, Petitioner's motion of June 9, 1994 was not filed until almost two years had elapsed after the District Court dismissed his complaint. Accordingly, the District Court determined, and the Court of Appeals properly affirmed, that because Petitioner's motion was based upon alleged fraud on the part of Respondent, Petitioner's motion was untimely since it was filed more than one year after the prior judgment was entered. *Pantoja v. Texas Gas & Transmission Corporation*, 890 F.2d 955, 960 (7th Cir. 1989), *cert. denied*, 497 U.S. 1024, 110 S. Ct. 3272 (1990).

In *Pantoja v. Texas Gas & Transmission Corp.*, 890 F.2d 955 (7th Cir. 1989), the plaintiffs filed an action in state court alleging that the defendants discharged them in retaliation for filing and pursuing an earlier lawsuit against them in federal court in 1977. The defendants removed the case to federal court and the district court subsequently dismissed the complaint on the basis that the plaintiffs failed to exhaust their grievance remedies under the parties' collective bargaining agreement and because the statute of limitations had expired.

The plaintiffs in *Pantoja* then filed a motion to vacate which, in part, attacked the prior judgment entered in 1977, alleging that the prior judgment was obtained through fraud on

the part of their own attorney and that the district court judge improperly failed to recuse himself in the 1977 action. The district court denied the plaintiffs' motion to reconsider the 1977 judgment.[2] The district court held that under Rule 60(b), a motion for relief from judgment based upon fraud on the part of an adverse party must be made within one year from the entry of the judgment or order. Thus, the district court concluded that the plaintiffs' motion for relief from the prior judgment was untimely and, further, determined that no reasonable person could question the district judge's impartiality.

On appeal, the Seventh Circuit Court of Appeals affirmed, holding that plaintiffs' Rule 60(b) motion was untimely since Rule 60(b)(3) only allows the court to afford relief from a judgment on the basis of fraud/misconduct of an adverse party if the motion is made within one year of the judgment. *Pantoja*, 890 F.2d at 960. The Court also concluded that to the extent that plaintiffs sought to introduce newly discovered evidence, the motion was likewise untimely filed. *Id.* at 960.

The Court of Appeals in *Pantoja* also held that Rule 60(b)(6) did not afford the plaintiffs any basis for relief, noting that this subsection is to be employed only in the most extraordinary circumstances. *Id.* at 960. The Court of Appeals further held that

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2. In the 1977 suit, the plaintiffs alleged that the defendants breached the collective bargaining agreement. The plaintiffs also claimed that the union breached its duty of fair representation. The district court granted the union's motion for summary judgment since plaintiffs failed to exhaust their internal union remedies. After a bench trial, the district court entered judgment in January 1981 in favor of the defendant employers. The Seventh Circuit affirmed in an unpublished opinion of September 1, 1982 and the United States Supreme Court denied the plaintiffs' petition for writ of certiorari. In November or December 1979, while the case was still pending before the district court, the plaintiffs were laid off from their jobs and eventually were terminated pursuant to the collective bargaining agreement.

even if the plaintiffs' allegations of fraud and misconduct on the part of their attorney were true, Rule 60(b) could not be utilized to address the plaintiffs' situation. Finally, the Court held that there was no basis for concluding that the district court judge in the 1977 action improperly failed to recuse himself.

To the extent that Petitioner in the present case seeks relief from the prior judgment in favor of Respondent based upon newly discovered evidence under subsection 2 of Rule 60(b), such motion is likewise untimely. Moreover, Petitioner has not alleged any facts which would entitle him to relief under Rule 60(b)(2). A motion for relief under Rule 60(b)(2) based upon newly discovered evidence requires the movant to show: (a) due diligence in discovering the evidence; (b) the evidence is material; (c) the evidence is not cumulative; (d) the evidence was discovered after trial; and (e) the newly discovered evidence would produce a different result. *Bank v. Hartford Accident & Indemnity Co.*, 737 F.2d 657, 662 (7th Cir. 1984). In the present case, review of Petitioner's motions filed on June 9, 1994 makes clear that Petitioner has not demonstrated entitlement to relief under Rule 60(b)(2) as he had not made the requisite showing of all of the elements set forth in *Bank v. Hartford Indemnity*, 737 F.2d at 662.

Additionally, Petitioner is not entitled to relief under subsections 4 or 6 of Rule 60(b). Rule 60(b)(4) authorizes the district court to grant relief from a judgment or order which is void. A void judgment or order, for purposes of Rule 60(b)(4), is a judgment or order entered by a court without jurisdiction or in contravention of due process. *Wesco Products Co. v. Alloy Auto Company*, 880 F.2d 981, 984 (7th Cir. 1989).

Unquestionably, Petitioner submitted himself to the jurisdiction of the United States District Court in the present case when he filed his complaint on March 12, 1992, alleging that

Respondent deprived him of the right to file a claim for the alleged property damage and thereby violated his constitutional rights of due process and equal protection. After Respondent filed a motion to dismiss that complaint, as expressly allowed by Rule 12(b) of the Federal Rules of Civil Procedure, the District Court granted Respondent's motion on June 25, 1992 and dismissed Petitioner's complaint with prejudice. Petitioner then submitted himself to the Court of Appeals' jurisdiction by appealing the decision of the District Court dismissing his complaint. Under these circumstances, it cannot be said that the judgment of the District Court of June 25, 1992 was entered without jurisdiction or in contravention of due process. Therefore, the judgment of June 25, 1992 was not void.

Finally, Petitioner's motions did not afford a basis for relief under Rule 60(b)(6). As set forth above, Rule 60(b) is an extraordinary remedy and is granted only in exceptional circumstances. *Dickerson v. Board of Education of Ford Heights, Illinois*, 32 F.3d 1114, 1116 (7th Cir. 1994); *Central States, Southeast & Southeast Areas Pension Fund v. Conaway*, 1991 U.S.Dist. LEXIS 15495 (N.D. Ill. 1991). Furthermore, Rule 60(b)(6), in particular, requires a showing of extraordinary circumstances that create a substantial danger that the underlying judgment was unjust. Relief under Rule 60(b)(6) is *only* available when the other subsections of Rule 60(b) are inapplicable. *Margoles v. Johns*, 798 F.2d 1069, 1072 (7th Cir. 1986), *cert. denied*, 482 U.S. 905, 107 S. Ct. 2482 (1987).

In the present case, because Petitioner's motion alleged fraud or misconduct on the part of Respondent, relief under Rule 60(b)(6) is not available as subsection (b)(3) would otherwise apply. As noted above, motions under Rule 60(b)(3) are subject to the one year filing limitation. Thus, Respondent asserts that the District Court correctly concluded, and the Court of Appeals properly affirmed, that Petitioner's motion was untimely filed

since the motion was based upon the alleged fraud of Respondent. Therefore, Petitioner was correctly precluded by the courts below from circumventing the one year filing limitation of subsection (b)(3) in this matter and was not entitled to relief under subsection (b)(6).

Furthermore, as correctly stated by the District Court, even if Petitioner's motion was considered timely filed, his allegations of fraud on the part of Respondent would not form the basis of a due process or equal protection claim. As a general rule, a plaintiff alleging a violation of civil rights must establish that the defendant was acting under color of state law. *Lawline v. American Bar Association*, 956 F.2d 1378 (7th Cir. 1992). Although a conspiracy between private citizens and state officials may be a basis for holding a private citizen liable for violation of civil rights, bald allegations of conspiracy are insufficient to state a claim against a private citizen. Rather, the plaintiff must allege specific facts showing that the state officials and the private party reached an understanding to deny the plaintiff of his constitutional rights. *Westfield Partners, Ltd. v. Hogan*, 740 F. Supp. 523 (N.D. Ill. 1990).

In the present case, neither Petitioner's original complaint filed with the District Court on March 12, 1992 nor his motions filed on June 9, 1994 contained allegations which, if proven, would establish that Respondent was acting under color of state law. Nor did Petitioner set forth specific facts which would establish a conspiracy between state actors and the Respondent.

Finally, Petitioner's original complaint as well as his June 9, 1994 motions failed to set forth any facts, which if proven, would establish that Respondent deprived him of a constitutionally protected right. The dismissal of Petitioner's cause of action against Respondent (based upon his failure to file suit within the suit filing limitation of the insurance policy) did not violate

Petitioner's constitutional right to file a claim. The "right" to file a claim pursuant to a policy of insurance is not a matter governed by the due process clause of the United States Constitution. Rather, any such "right" is contractual in nature and governed by the terms and conditions of the policy of insurance. The Circuit Court of Cook County, Illinois dismissed Petitioner's complaint based upon his violation of the terms and conditions of the policy. Petitioner was afforded due process; he sued, appealed, and lost, but he had his day in court.

Respondent also notes that as part of his argument that he was fraudulently deprived of his right to file a claim, Petitioner asserted that counsel for the Respondent "misrepresented this case" and, as a result, Respondent terminated the services of Attorney Frederick J. Sudekum, and the law firmof Querrey & Harrow. Clearly, Petitioner's assertions on this point are incorrect as Mr. Sudekum as well as the law firmof Querrey & Harrow have continued to represent Respondent in this matter, as evidenced by the various documents filed on behalf of Respondent.

Based upon the foregoing reasons, Respondent asserts that the Seventh Circuit Court of Appeals properly held that the District Court did not abuse its discretion in determining that Petitioner was not entitled to relief from the prior judgment of June 25, 1992 in favor of Respondent.[3] Accordingly, Respondent contends that the Court of Appeals' decision of September 13, 1995, affirming the District Court's denial of relief from the June 25, 1992 judgment, was proper in all respects. *Williams v. Hatcher*, 840 F.2d 993 (7th Cir. 1989).

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3. Respondent also contended that in June 1994, the District Court had no jurisdiction to review the merits of the June 25, 1992 order dismissing Plaintiff's complaint since the order of June 25, 1992 was previously affirmed by the Court of Appeals for the Seventh Circuit by order of September 30, 1992.

III.

PETITIONER'S MOTION TO APPOINT COUNSEL WAS PROPERLY DENIED.

In conjunction with his motions filed with the District Court on June 9, 1994, Petitioner also sought the appointment of counsel to represent him in this matter. Petitioner's request for the appointment of counsel was denied by the District Court on July 6, 1994. Petitioner thereafter appealed to the Court of Appeals for the Seventh Circuit, which held that the District Court did not abuse its discretion in denying the request for counsel. Respondent asserts that the motions for appointment of counsel were properly denied by the Court of Appeals as well as by the District Court.

A. Standard for Appointment of Counsel in Civil Actions

Initially, Respondent notes that there is no constitutional right to court-appointed counsel in a civil action. *Barkauskas v. Lane*, 946 F.2d 1292, 1294 (7th Cir. 1991); *Lokmar Yazid Abdul-Wadood v. Duckworth*, 860 F.2d 280 (7th Cir. 1988), *overruled on other grounds*, 940 F.2d 243 (7th Cir. 1991); *Caruth v. Pinkney*, 683 F.2d 1044, 1048 (7th Cir. 1982), *cert. denied*, 459 U.S. 1214, 103 S. Ct. 1212 (1983). The District Court has discretion to appoint counsel for a civil rights litigant and the refusal to appoint counsel will only be overturned when it results in fundamental unfairness impinging on the litigant's due process rights. *Howland v. Kilquist*, 833 F.2d 639 (7th Cir. 1987).

In determining whether counsel should be appointed, the District Court may consider: (1) the petitioner's ability to investigate the facts; (2) whether the only evidence consists of conflicting testimony which would require effective cross-

examination; (3) the ability of the petitioner to present his case without counsel; and (4) the complexity of the legal issues involved. *Howland v. Kilquist*, 833 F.2d at 646.

The court must also consider the merits of the litigant's claim from a legal and factual standpoint; the court need not appoint counsel when it considers the litigant's chances of success extremely slim. *Caruth v. Pinkney*, 683 F.2d 1044, 1048 (7th Cir. 1982), *cert. denied*, 459 U.S. 1214, 103 S. Ct. 1212 (1983). In *Caruth*, the plaintiff was an inmate who was removed from his job as a law clerk at a prison law library for alleged unauthorized use of the library photocopier machine. The plaintiff then brought a civil rights action against certain prison officials, alleging that he was improperly removed from his job. The plaintiff in *Caruth* also requested that counsel be appointed to represent him in his civil rights action. The district court denied his motion and the Seventh Circuit Court of Appeals affirmed, holding that the facts and issues alleged were not of such complexity, controversy, or merit to entitle the plaintiff to appointment of counsel. *Caruth*, 683 F.2d at 1050.

B. Petitioner's Request for Counsel Was Properly Denied

In the present case, application of the above-cited factors to the facts and posture of this case leads to the conclusion that Petitioner's request for the appointment of counsel was properly denied, both by the District Court as well as by the Seventh Circuit Court of Appeals. First, examination of the facts and legal issues presented by Petitioner's June 9, 1994 motions revealed a slim chance of success on the merits, particularly in light of the District Court and Seventh Circuit Court of Appeals' previous rulings in this matter.

Moreover, Petitioner's complaint was dismissed by the District Court pursuant to Respondent's Rule 12(b) motion. Thus, this case did not involve conflicting evidence requiring

effective cross-examination. Additionally, Petitioner chose to proceed *pro se* at the hearing of June 25, 1992 at which time the District Court dismissed his complaint. Petitioner then waited approximately two years to file his motions of June 9, 1994, including his request for the appointment of counsel. Finally, the legal issues raised by Petitioner's complaint, as well as his motions filed on June 9, 1994, are not of such complexity or merit so as to require the appointment of counsel.

Moreover, the Seventh Circuit Court of Appeals, in its opinion of September 13, 1995, noted that Petitioner demonstrated that he was "quite capable of making arguments and pursuing his suits in both State and Federal court." Accordingly, Respondent asserts that the District Court and Seventh Circuit Court of Appeals did not abuse its discretion in denying Petitioner's request for appointment of counsel.

IV.

THE DISTRICT COURT PROPERLY DISMISSED PETITIONER'S COMPLAINT BY ITS ORDER OF JUNE 25, 1992.

As set forth above, Petitioner filed his complaint in the District Court on or about March 12, 1992, alleging a violation of his constitutional right to due process and equal protection pursuant to the Fourteenth Amendment of the United States Constitution. In its opinion and order of June 25, 1992 dismissing Petitioner's complaint, the District Court stated that Petitioner alleged that he was denied due process and equal protection because the Illinois Circuit Court barred him from filing a claim. However, the District Court concluded that Petitioner was not barred from filing a claim by the Circuit Court, but by the applicable insurance policy conditions. The District Court also determined that Petitioner failed to set forth any valid

constitutional claim for the denial of due process or equal protection, concluding that the state court proceedings afforded Petitioner due process and equal protection. By order dated September 30, 1992, the Seventh Circuit Court of Appeals summarily affirmed the decision of the District Court dismissing Petitioner's complaint.

Because the Seventh Circuit Court of Appeals, by its order of September 30, 1992, previously addressed and affirmed the propriety of the District Court's order of June 25, 1992 dismissing Petitioner's complaint, Respondent contends that the Seventh Circuit Court of Appeals, when it rendered its decision of September 13, 1995, properly declined to re-examine the underlying ruling.

Moreover, Respondent contends that this court need not and should not examine the underlying decision of June 25, 1992 dismissing Petitioner's complaint, particularly since Petitioner did not appeal from the Seventh Circuit Court of Appeals' order of September 30, 1992. An appeal from the denial of a Rule 60(b) motion does not trigger appellate review of the merits of the underlying judgment. *Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 263, 98 S. Ct. 556 (1978); *Harold Washington Party v. Cook County*, 984 F.2d 875, 880 (7th Cir. 1993), *cert. denied*, 126 L. Ed. 2d 54, 114 S. Ct. 86 (1994).

However, even assuming that this Court chooses to re-examine the District Court's June 25, 1992 ruling, Respondent maintains that the District Court properly dismissed Petitioner's Complaint by its order of June 25, 1992.

A. Petitioner's Complaint Did Not Set Forth a Valid Constitutional Claim.

As set forth above, a plaintiff alleging a violation of civil rights must establish that the defendant was acting under color of

state law. *Lawline v. American Bar Association*, 956 F.2d 1378 (7th Cir. 1992). Although a conspiracy between private citizens and state officials may be a basis for holding a private citizen liable for violation of civil rights, bald allegations of conspiracy are insufficient to state a claim against a private citizen. Rather, the plaintiff must allege specific facts showing that the state officials and the private party reached an understanding to deny the plaintiff of his constitutional rights. *Westfield Partners, Ltd. v. Hogan*, 740 F. Supp. 523 (N.D. Ill. 1990).

In the present case, Petitioner's complaint did not contain allegations which, if proven, would establish that Respondent was acting under color of state law. Nor did Petitioner set forth specific facts which would establish a conspiracy between state actors and the Respondent. Finally, Petitioner's complaint failed to set forth any facts, which if proven, would establish that Respondent deprived him of a constitutionally protected right.

Moreover, Petitioner's original complaint as well as his June 9, 1994 motions fail to set forth any facts, which if proven, would establish that Respondent deprived him of a constitutionally protected right. The dismissal of Petitioner's cause of action against Respondent based upon his failure to file suit within the suit filing limitation of the insurance policy did not violate Petitioner's constitutional right to file a claim. The "right" to file a claim pursuant to a policy of insurance is not a matter governed by the due process clause of the United States Constitution. Rather, any such "right" is contractual in nature and governed by the terms and conditions of the policy of insurance. The Circuit Court of Cook County dismissed Petitioner's complaint based upon his violation of the terms and conditions of the policy. Petitioner was afforded due process; he sued, appealed, and lost, but, again, he had his day in court.

B. The District Court Properly Declined to Review the State Court Rulings.

Moreover, the District Court properly declined to review the prior rulings made by the Illinois state courts in this matter. A federal district court, except in limited circumstances, does not have the authority to review state court determinations. *Landers Seed Company v. Champaign National Bank*, 15 F.3d 729 (7th Cir. 1994), *cert. denied*, 130 L. Ed. 2d 20, 115 S. Ct. 62 (1994). In *Landers*, the bank sued the defendant, Landers Seed, in state court to collect on a promissory note. The defendant filed a counterclaim for breach of contract. The jury made an award in favor of each party, however, on appeal, the Illinois Appellate Court reversed the judgment in favor of the defendant for insufficiency of evidence. The defendant filed a petition for rehearing which was denied by the Illinois Appellate Court and, thereafter, filed a petition for leave to appeal which was denied by the Illinois Supreme Court. The defendant's petition for writ of certiorari was denied by the United States Supreme Court. All of these petitions alleged that the Appellate Court's reversal of the judgment on the counterclaim violated the defendant's due process rights. *Landers Seed*, 15 F.3d at 730.

The defendant in the state court actions then filed a motion for relief from judgment with the state trial court, which was denied; the denial of relief was then affirmed by the Illinois Appellate Court. The Illinois Appellate Court also denied the defendant's request for rehearing and, finally, the Illinois Supreme Court denied leave to appeal.

The defendant in *Landers Seed* then sued the bank in federal district court under 42 U.S.C. § 1983. The District Court dismissed the complaint for lack of subject matter jurisdiction. On appeal, the Seventh Circuit Court of Appeals affirmed, holding that the plaintiff (the defendant in the prior state court proceedings) was essentially asking the District Court to

invalidate a state court judgment. The Seventh Circuit Court of Appeals held that except in limited circumstances, a federal district court does not have the authority to review state court determinations. *Landers Seed*, 15 F.2d at 732.

The Seventh Circuit in *Landers Seed* held that a district court may preside over challenges to state court rules if review does not require review of a final state court judgment in a particular case. *Landers Seed*, 15 F.3d at 732. However, the Seventh Circuit held that when constitutional claims presented to the District Court are inextricably intertwined with a state court's denial in a judicial proceeding of a particular plaintiff's claim, then the district court is, in essence, being called upon to review the state court's decision and this it may not do. *Landers Seed*, 15 F.3d at 732. In *Landers Seed*, the Seventh Circuit Court of Appeals concluded that the claims made and the relief sought by the plaintiff in the federal district court were inextricably intertwined with the earlier state court judgments and that the federal district court therefore properly dismissed the complaint for lack of subject matter jurisdiction. 15 F.3d at 733.

The state court procedural background in the present matter is similar to that outlined above in *Landers Seed*. As set forth in Respondent's Statement of the Case, prior to bringing his federal court action, Petitioner filed an action arising out of the same loss against Respondent in the Circuit Court of Cook County Illinois on or about March 3, 1987, docketed to No. 87 CH 2006. Petitioner's state court action was dismissed with prejudice by the Circuit Court of Cook County on the basis that Petitioner failed to file his action within one year of the date of loss in compliance with the provisions of the policy of insurance. Petitioner's contention that he was denied the right to file a claim is belied by the court's ruling in the state action, as the court determined that Petitioner did present a claim to Respondent under his insurance policy and the claim was properly denied by the Respondent. Thus, the

question of whether Petitioner made a claim under the policy was resolved long ago by the state court.

The dismissal of Petitioner's complaint was subsequently affirmed by the Appellate Court of Illinois for the First District on May 23, 1990. The Illinois Supreme Court thereafter denied Petitioner's petition for leave to appeal by order dated February 6, 1991. Finally, Petitioner's petition for writ of certiorari was denied by the United States Supreme Court on October 7, 1991.

As in *Landers Seed*, those state court judgment were "inextricably intertwined" with the claims made and the relief later sought by the Petitioner in federal court. Based upon the above holding in *Landers Seed*, Respondent asserts that the United States District Court had no authority to review or invalidate the prior judgments of the Illinois state courts in this matter.

C. Petitioner's Federal Claims Are Barred by *Res Judicata*

Finally, Petitioner's federal action was barred by the doctrine of res judicata. Under this doctrine, a final judgment on the merits acts as a bar to further claims by the same parties based upon the same cause of action. *Beard v. O'Neal*, 728 F.2d 894 (7th Cir. 1984), *cert. denied*, 469 U.S. 825, 105 S. Ct. 104 (1984). The prior judgment bars relitigation not only as to those issues that were raised and decided previously, but also as to issues that could have been raised. *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272, 1277 (7th Cir. 1983).

In the present case, the Circuit Court of Cook County, Illinois as well as the Illinois Appellate Court, rendered a decision on the merits of Petitioner's claims. Since Petitioner's claims in the United States District Court, albeit couched in "due

process" and "equal protection" language, are the same claims as those presented by him in the Illinois state courts, Petitioner's federal action was barred by res judicata.

CONCLUSION

Based upon the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari filed by Petitioner, Robert Wilson

Respectfully submitted,

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